Supreme Court, U.S.
FILED
AUG 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-96

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHARLES MILBURN, JR., a minor, by Charles B. Milburn, his father and next friend,

Petitioners,

v.

ANNE ARUNDEL COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,

Respondents.

On Appeal from the Decision and Order of the Fourth Circuit Court of Appeals

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT I

PLAINTIFF'S PARENTS DID NOT PLACE PLAINTIFF IN THE TUCKER FOSTER HOME

Throughout Respondents' Brief In Opposition To Petition For Writ Of Certiorari it is stated that Plaintiff's parents placed Plaintiff in the Tucker foster home. See pages 3, 4, 5, 6 and 8 of the Brief In Opposition. This is simply not the case. The State placed Plaintiff in the Tucker foster home. Plaintiff's Complaint is reprinted in the appendix attached hereto. Note paragraphs 11, 20 and 28 of the Complaint. The most that can be said about Plaintiff's parents is that they did not contest the placement of their child in foster care at that time. See paragraph 20 of the Complaint.

Respondents' argument seems to be that Plaintiff lost all of his constitutional rights because his parents did not contest his placement into foster care. That argument, if valid, would create two categories. Presumably those children whose parents contest foster care would have constitutional rights but those who did not would have children who have no constitutional rights.

The key facts are that the State took custody of Plaintiff by the affirmative exercise of its power to do so under the law of Maryland and the State placed the Plaintiff in the Tucker foster home where his liberty was thus restrained. That his parents consented to foster care is irrelevant. In *Youngberg v. Romeo*, 457 U.S. 307, 73 L.Ed.2d 28 102 S.Ct. 2452 (1982), Nicholas Romeo's mother did more than just consent to his institutionalization. She brought the petition to have him committed. Despite this the Court

held he was entitled to State protection from physical violence inflicted by third parties.

ARGUMENT II

RESPONDENT SOCIAL WORKERS ARE NOT ENTITLED TO IMMUNITY UNDER THE QUALIFIED IMMUNITY DOCTRINE

This issue was not addressed by the Court of Appeals in the case at bar.

The issue of immunity in a foster child case was addressed in the case of *J.L. By and Through Darr v. Massinga*, 838 F.2d 118 (4th Cir. 1988). Plaintiffs were present and former foster children in the custody of the Baltimore City Department of Social Services who sued state and city officials, caseworkers, and supervisors who played a role in administering Maryland's federally funded foster care program alleging maladministration of the program. The Plaintiffs alleged they were victims of physical and sexual abuse and medical neglect.

The Court of Appeals in *Massinga, supra*, said that the federal statute on foster care 42 U.S.C. §608 (The Federal Aid to Families with Dependent Children program (AFDC-FC)) created clear and certain statutory obligations upon the social workers to provide foster children with care and protection. The Court further said that those statutory obligations have existed since *1961* and that the statutory duties create a standard of conduct that the social workers owe to the foster children under the AFDC-FC program such as development of a plan for each child to assure that he receives proper care and a periodic review of the appropriateness of the care being provided. Therefore,

the Court in *Messinga, supra*, held that the social worker defendants because of the statutory duties and obligations placed upon them could not be said to exercise discretion in an area in which the law respecting their duties and obligations was uncertain and thus their claim of immunity under a motion for summary judgment was denied. The court held their right to claim immunity must be determined by an objective test rather than their subjective good faith belief. *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982). It is true that the AFDC Act was inapplicable to voluntary placements at the time petitioner was in foster care and was applicable only to those children put in foster care by way of a judicial determination of need of protection. But certainly the standard of care due Plaintiff in the case at bar from Respondents is at least equal to the duties owed a child who was placed in foster care pursuant to a judicial determination of need for protection unless the Respondents can show they actually had a double standard of conduct. Such a double standard would be ludicrous. It would be unreasonable for anyone working in the foster care field in 1972 - 1973 when Plaintiff received his injuries (ten years after the AFDC-FC Act) to say that their duties of care and supervision of children voluntarily placed in the system was something less than the duties owed to those children placed in the system by way of a judicial determination. To the extent the Respondents have discretion in the exercise of their duties they would not be justified in doing or in failing to do what is alleged in the Complaint.

CONCLUSION

For the above further reasons the Writ for Certiorari should issue.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL NO. JH 83-2857

CHARLES MILBURN, JR. a minor
by CHARLES B. MILBURN, his
father and next friend

Plaintiff

vs.

ANNE ARUNDEL COUNTY
DEPARTMENT OF SOCIAL SERVICES

SERVE ON: Edward Bloom
Director
West Gate Building
80 West Street
Annapolis, Maryland 21401

and

ANNE ARUNDEL COUNTY, MARYLAND,
a Municipal Corporation

SERVE ON: James Lighthizer,
County Executive
Arundel Center
Annapolis, Maryland 21401

and

ESTHER CARPENTER, Individually and
as the former Director of ANNE
ARUNDEL COUNTY DEPARTMENT OF
SOCIAL SERVICES
1744 Old Annapolis Road
Annapolis, Maryland

and

JUDY FINN PLYMYER, Individually
and as caseworker, ANNE ARUNDEL
COUNTY DEPARTMENT OF SOCIAL
SERVICES, 676 Kensington Avenue
Severna Park, Maryland 21146

and

ELIZABETH TYLER, Individually
and as supervisor, ANNE ARUNDEL
COUNTY DEPARTMENT OF SOCIAL
SERVICES, West Gate Building,
80 West Street, Annapolis,
Maryland 21401

and

WENDY L. TUCKER
198 Bell Avenue
Glen Burnie, Maryland 21061

and

KARL T. TUCKER
969 Annapolis, Road
Gambrills, Maryland 21054

NORTH ARUNDEL HOSPITAL ASSOCIATION INC.
a Maryland Corporation

SERVE ON:
Wilfred T. Azar
Azar Building
Glen Burnie, Maryland 21061

and

HAZEL GENT
North Arundel Hospital
101 Hospital Drive
Glen Burnie, Maryland 21061

and

SERGIO ALVAREZ, M.D.
300 Hospital Drive
Glen Burnie, Maryland 21061

and

BALTIMORE CITY HOSPITALS
4940 Eastern Avenue
Baltimore, Maryland 21224

SERVED ON:
Benjamin L. Brown
First Floor
City Hall
Zone 02
Baltimore, Maryland

EDUARDO MAZZI, M.D.
Baltimore City Hospitals
4940 Eastern Aveune
Balitmore, Maryland 21224

and

OPHILIA JANES, M.D.
Baltimore City Hospitals
4940 Eastern Avenue
Baltimore, Maryland 21224

and

MARYLAND HARTGE
Baltimore City Hospitals
4940 Eastern Avenue
Baltimore, Maryland 21224

Defendants

PRELIMINARY STATEMENT

1. This is a civil rights action in which Plaintiff seeks damages to redress the deprivation, under color of state

law, of rights secured to him under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Plaintiff also appends state claims.

2. The Plaintiff, Charles Milburn, Jr., infant son of Charles B. Milburn, was placed in foster care and while in the care and custody of the Defendants, the said infant suffered from neglect and severe physical and emotional abuse. Charles Milburn, Jr., was repeatedly neglected, injured, assaulted, beaten and in one instance severly burned while in foster care in gross disregard of his rights to adequate supervision while in foster care and his right to live free from abuse.

II. JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. §1343 (3), (4), which provides for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of any right, priviledge, or immunity secured by the Constitution of the United States or by an Act of Congress. Jurisdiction is also conferred on this Court by 28 U.S.C. §1331 (a), because the cause of action arises under the Constitution and laws of the United States and the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

4. Independent of any federal causes of action, this court has pendant jurisdiction over Plaintiff's claim arising under the laws of the State of Maryland.

III. PARTIES

5. Charles B. Milburn is the father of Charles Milburn, Jr. who was born on July 8, 1969. Charles B. Milburn and the minor son, Charles Milburn Jr., currently reside together at 1296 Steamboat Road, Shady Side, Anne Arundel County, Maryland.

6. Defendant, Anne Arundel County Department of Social Services (hereinafter D.S.S.), was a department of Anne Arundel County, Maryland at the time applicable to this case (and is now) an agency authorized by Maryland State law to place and board children in temporary foster care away from their own homes. It is the responsibility of said Defendant to provide care, supervision and services to the children in foster care. D.S.S. is authorized to promulgate rules and regulations in discharge of its functions.

7. Defendant, Anne Arundel County, Maryland, a public corporation, is the local municipality of which Defendant, D.S.S. is an agency or department thereof. It is the responsibility of this Defendant to provide care, supervision, and services to children in foster care as mandated by Maryland State law which function said Defendant (at the time applicable to the events of this case) carried out through D.S.S.

8. Defendant, Esther Carpenter, was the Director of D.S.S. at the time applicable to the events of this case. As said Director of D.S.S., she was charged with the responsibility of carrying out the functions of said agency.

9. Defendant, Judy Finn Plymyer, at the time applicable to the events of this case,was an employee of D.S.S. assigned by D.S.S. as the caseworker to supervise the foster car placement of the minor Plaintiff, Charles B. Milburn, Jr.

10. Defendant, Elizabeth Tyler, at the time applicable to the events of this case, was a supervisor employed by D.S.S., and was assigned by D.S.S. to supervise the foster care case of the minor Plaintiff, Charles B. Milburn, Jr.

11. Defendants, Karl T. Tucker and his wife, Wendy L. Tucker, were the foster parents to whom D.S.S. assigned the minor Plaintiff, Charles B. Milburn, Jr. to live with in foster care in their foster home licensed and approved by D.S.S. Each was also under a duty as foster parents

to properly supervise and care for foster children entrusted to their home.

12. Defendant, North Arundel Hospital Association, Inc. is a hospital, (hereinafter North Arundel Hospital) in which the infant Plaintiff was treated for injury and the Defendant, Hazel Gent was a nurse, employee of North Arundel Hospital Association, Inc., who had occasion to care for and observe the infant Plaintiff. The Defendant, Sergio Alvarez, M.D., was an employee of North Arundel Hospital Association, Inc. and a physician who treated the infant Plaintiff in said hospital for injury.

13. Defendant, Baltimore City Hospitals, is a hospital in which the infant Plaintiff was treated for burn injury to his hands and wrist and Defendant, Eduardo Mazzi, M.D., was an employee of said hospital who treated the infant Plaintiff while in said hospital for said injury along with fellow employee, Ophilia Janes, M.D.; Defendant, Maryland Hartge, was a social worker employed by Baltimore City Hospitals, who investigated the case of abuse of the infant Plaintiff and who along with Drs. Eduardo Mazi and Ophilia Janes knew of the previous injuries suffered by the infant Plaintiff prior to his admission to Baltimore City Hospitals for burned hands and wrist.

IV. STATEMENT OF FACTS

14. While the Social Services Administration of the Department of Employment and Social Service of the State of Maryland (at the time applicable to the events of this case) was the central coordinating and directing agency which set policy and administrative requirements of the child welfare programs pursuant to Article 88A, *1969 Replacement Volume*, Section 3, the local department (D.S.S.) in each political subdivision directly provided the statutorily mandated care outside of the home on behalf of dependent children by virtue of Article 88A, *1969 Replacement Volume*, Sections 13 through 60A and §68 of the Annotated Code of Maryland.

15. From May of 1971 until November of 1974, the Defendants, Karl T. Tucker and Wendy L. Tucker, his wife, operated a foster home licensed, regulated, and approved by D.S.S. at 198 Bell Avenue, Glen Burnie, Anne Arundel County, Maryland. Specifically on March 29, 1971, the Defendants, Karl T. Tucker and Windy L. Tucker, made an application to D.S.S. for approval of their home as a foster home, pursuant to requirements of the State of Maryland.

16. Pursuant to regulations of the State of Maryland all applicants were required to submit to an evaluation of their ability to care for foster children by D.S.S. and if approved the applicants were required to enter into a written agreement with D.S.S.

17. On April 29, 1971, D.S.S. entered into a Foster Parents' Agreement with the Defendants, Karl T. Tucker and Wendy L. Tucker, thus accepting them as foster parents. A copy of the Agreement is attached hereto and incorporated herein by reference and marked Plaintiff's Exhibit No. 1.

18. On May 14, 1971, D.S.S. through its Director, the Defendant, Esther H. Carpenter, executed an Agency Home Approval form which is attached hereto and incorporated herein by reference and marked Plaintiff's Exhibit No. 2 certifying that the home of Defendants Karl T. Tucker and Wendy L. Tucker met the standards for agency homes as defined by the rules of the Maryland State Department of Social Services.

19. Not only did the Foster Parents' Agreement (Exhibit No. 1) require that D.D.S. supervise all foster child placements in the home of Defendants, Karl T. Tucker and Wendy L. Tucker, but in addition thereto Maryland Agency Rules and Regulations (MARR) in effect at the time, 7.02.11 Sections .01 *et seq.*, required supervision of foster child placements by the local D.S.S.

20. On June 10, 1971, when infant Plaintiff Charles B. Milburn, Jr. was 23 months old, Defendant, D.S.S., placed him as a foster child in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker. The placement of the infant Plaintiff, Charles Milburn Jr., was described as a "voluntary placement", i.e. that the parents of the said Charles Milburn, Jr. agreed that he should receive foster care at that time.

21. The infant Plaintiff, Charles B. Milburn, Jr., remained in the foster home of Defendants, Karl T. Tucker and Wendy L. Tucker, from June 10, 1971 until May of 1973 when he was removed therefrom by Defendant, D.S.S.

22. Defendant D.S.S. (at the time applicable to the events of this case) participated in the federal foster care program, 42 U.S.C. 608 *et seq.* As a condition of the receipt of federal funds, Defendant D.S.S. must comply with federal law.

23. The Federal Foster Care Statute, 42 U.S.C. 608 (f) (i), expressly requires provision for the "development of a plan for each child. . .to assure that he receives proper care. . ."

24. Further, since July 1, 1969, 45C.F.R.220.19 has required that "services must be provided children receiving aid in the form of foster care. . .to.(a) Assure placement appropriate to the needs of each child. (b) Assure that the child receives proper care in such placement. . .".

25. Maryland Agency Rules and Regulations (MARR) 7.02.13.03 stated (at the time applicable to the events of this case): "Children accepted for foster care shall usually be placed in foster family homes or other facilities approved by and under the supervision of the local department."

26. Maryland Agency Rules and Regulations (MARR) 7.02.11 Sections .01 *et. seq.*, required Defendant D.S.S. to

make successive yearly investigations of all foster parents certified and to recertify all foster parents each year.

V. COUNT ONE

27. Paragraphs "1 through 26" are hereby realleged and incorporated by reference herein.

28. On or about June 10, 1971, Defendant D.S.S., placed the infant Plaintiff, Charles Milburn, Jr., in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker, his wife; from that time until May of 1973 the Defendant, Wendy L. Tucker, regularly beat, assaulted, neglected and in one instance severely burned the said Plaintiff, Charles B. Milburn, Jr., and the Defendant Karl T. Tucker failed to properly supervise the care of the infant Plaintiff in his home and failed to report his wife's neglect and abuse of the infant Plaintiff which he knew or in the exercise of reasonable care should have known.

29. That as a proximate result of the assault, beatings, neglect and child abuse by Defendant, Wendy L. Tucker, the infant Plaintiff received the following injuries while residing in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker:

a. On or about January 20, 1972, the infant Plaintiff suffered multiple bruises and a fracture of the femur of the right leg with massive hematoma.

b. On or about November 13, 1972, the infant Plaintiff suffered a deep laceration over the left eye.

c. On or about January 12, 1973, the infant Plaintiff suffered severly burned hands leaving him with permanently disfiguring scars and permanent disability.

d. On or about May 1, 1973, the infant Plaintiff suffered a fracture of the tibia of the left leg.

In addition, the infant Plaintiff suffered teeth injury and injury to his head the dates of which are not known.

30. With respect to the incident of January 20, 1972, (a) above, the North Arundel Hospital in which the infant Plaintiff was treated for his injuries forwarded to Defendant D.S.S. a report entitled: "Report of Suspected Child Abuse". In this report said hospital warned Defendant, D.S.S., that the infant Plaintiff had been admitted not only with a fractured femur but also "with numerous bruises" and it was further noted in said report: "Child displays fear of foster mother". Additional records from the North Arundel Hospital concerning the incident of January 20, 1972 disclosed that the supervisor of nurses, Hazel Gent, on February 28, 1972 talked by telephone with the Director of Defendant, D.S.S., Defendant Esther Carpenter, and reported to said Defendant that the infant Plaintiff had been admitted with many bruises and displayed a fear of the foster mother.

31. Despite the above warning and notice, Defendant D.S.S. did not investigate the matter as it had a duty to do and displayed gross negligence and deliberate indifference to the infant Plaintiff's welfare and his constitutional and statutory rights to supervision and freedom from physical harm and D.S.S. continued the placement of the infant Plaintiff in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker.

32. Thereafter, the infant Plaintiff suffered the injuries outlined in paragraph 27 (b) (c) and (d) all while the infant Plaintiff was required to reside in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker.

33. The Defendant, Anne Arundel County, Maryland and the Defendant D.S.S., its agents, servants and employees were under a duty to properly inspect, regulate, control and supervise the placement of the infant Plaintiff in said foster home yet Defendant, Anne Arundel County, Maryland and Defendant, D.S.S., and its agents, servants and employees responsible for the proper placement and supervision of the infant Plaintiff while in foster care, namely, the Defendants Esther H. Carpenter, Director of

D.S.S., Defendant Elizabeth Tyler, the supervisor responsible for the infant Plaintiff's case, and Defendant, Judy Finn Plymyer, who was the caseworker assigned to the case of the infant Plaintiff, each singly and collectively displayed a deliberate indifference and gross negligence as to the constitutional and statutory rights of the infant Plaintiff to live in a properly supervised foster home free of injury to his person and failed to insure that the infant Plaintiff received proper care while in foster care.

34. The gross negligence and deliberate indifference as to the constitutional right of the infant Plaintiff to live in a properly supervised foster home free of injury to his person consisted in the fact that the Defendants, Anne Arundel County, Maryland, and D.S.S., Esther Carpenter, Elizabeth Tyler, Judy Finn Plymyer, failed to properly supervise the placement of the infant Plaintiff in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker, failed to heed the aforesaid warning and notice given by the North Arundel Hospital, concerning the January 20, 1972 incident, failed to investigate the incident of January 20, 1972, and failed to remove the infant Plaintiff from the foster home of Defendants Wendy Tucker and Karl T. Tucker immediately after the incident of January 20, 1972. Instead, the infant Plaintiff was required to continue to reside in said foster home and he suffered the additional injuries described in paragraph 27 (b), (c), (d) as a direct and proximate result of the failure of the Defendants, Anne Arundel County, Maryland, D.S.S., Esther Carpenter, Elizabeth Tyler and Judy Finn Plymyer to properly supervise the placement of the infant Plaintiff in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker and remove the infant Plaintiff from said foster home.

35. The deliberate indifference and gross negligence as to the constitutional rights of the infant Plaintiff by the Defendants Anne Arundel County, Maryland, D.S.S., Esther Carpenter, Elizabeth Tyler and Judy Finn Plymyer and failure to insure that the infant Plaintiff received

proper care while in foster care was further displayed at the time the infant Plaintiff suffered severly burned hands on or about January 12, 1973. At or about that time the Defendant, Wendy L. Tucker, assaulted said infant Plaintiff and immersed his hands in hot boiling water to punish him. As a result, the infant Plaintiff suffered severe burns to his hands and wrists. On or about January 13, 1973, the Defendant Judy Finn Plymyer learned of the burns yet failed to investigate the incident and the surrounding facts of same. Despite the fact that the Defendant, Judy Finn Plymyer, knew of the burns as early as January 13, 1973, neither she nor the Defendants, Karl T. tucker and Wendy L. Tucker, sought medical treatment for the infant Plaintiff although each knew, or in the exercise of reasonable care should have known, that medical treatment was necessary, immediately. Specifically on January 13, 1973, the Defendant, Wendy L. Tucker, told Defendant Judy Finn Plymyer that the hands and wrists of the infant Plaintiff were very red and that blisters had appeared but that she did not want to take the infant Plaintiff to the doctor for fear of being accused of child abuse. At that time Defendant, Wendy L. Tucker, told Defendant, Judy Finn Plymyer, that she had taken the infant Plaintiff to her regular pediatrician for treatment of head injuries just a few weeks before (and before that she had taken her own son to the same pediatrician for head injuries) and was afraid she would be accused of child abuse of the infant Plaintiff. Thus, Defendant, Judy Finn Plymyer, agreed to allow Defendant, Wendy L. Tucker, to treat the burns of the infant Plaintiff at home. On January 29, 1973, the infant Plaintiff (ill because of his burns) had to be rushed to Baltimore City Hospital for surgery on said hands and wrists. The 17 day delay in seeking professional medical care caused the muscles of each hand to severly contract and the infant Plaintiff has severe permanent damage to his hands and arms and disfiguring scars on his hands and arms.

36. Despite the urgings and warnings of the physicians who treated the infant Plaintiff in the Baltimore City Hospital (made directly to Defendant Judy Finn Plymyer) against returning the infant Plaintiff to the foster home of Defendants Karl T. Tucker and Wendy L. Tucker, the infant Plaintiff was nonetheless returned to said foster home on or about April 3, 1973 by Defendant D.S.S. upon the recommendation of Defendant Esther Carpenter, Defendant Judy Finn Plymyer and Defendant Elizabeth Tyler.

37. On May 1, 1973 the infant Plaintiff while residing in the foster home of Defendants Karl T. Tucker and Wendy L.. Tucker suffered a fracture of the tibia of the left leg and was treated for same the following day in North Arundel Hospital. On May 8, 1973 the infant Plaintiff was again admitted to Baltimore City Hospital for treatment and then referred to Happy Hills Hospital for further evaluation.

38. On or about August 21, 1973, Defendant D.S.S., finally placed the infant Plaintiff in a different foster home, the home of Stephen and June Wurtz, 9 Victor Parkway, Annapolis, Maryland.

39. The Defendants, Anne Arundel County, Maryland, D.S.S., Esther Carpenter, Judy Finn Plymyer and Elizabeth Tyler knew or should have known in the exercise of reasonable care and supervision of the placement of the infant Plaintiff in the foster home of Defendants Karl T. Tucker and Wendy L. Tucker that such placement was dangerous to the physical and mental well being of the infant Plaintiff yet took no action to remove the infant Plaintiff from said foster home until August 21, 1973.

40. The failure to remove the infant Plaintiff from the foster home of Karl T. Tucker and Wendy L. Tucker upon learning of the incident of January 12, 1973, and not investigating same, of allowing the Defendant, Wendy L. Tucker, to treat the severe burns at home and of then

returning the infant Plaintiff to the foster home of Defendants Karl T. Tucker and Wendy L. Tucker where he received another fractured leg on or about May 1, 1973, were all in gross disregard of the infant Plaintiff's constitutional rights to proper supervision and freedom from physical harm.

41. Defendant, Anne Arundel County, Maryland, D.S.S., and its employees, Esther Carpenter, Elizabeth Tyler and Judy Finn Plymyer failed to make adequate and proper investigation of the Defendants Karl T. Tucker and Wendy L. Tucker and failed to discover that Wendy Tucker was a violent, abusive and unstable person, unsuitable for the responsibilities of being a foster parent, and that Karl T. Tucker was not suitable for the responsibilities of being a foster parent.

42. As early as January 1972 the Defendants, Anne Arundel County, Maryland, and D.S.S., through its agents, officers and employees, Esther Carpenter and Elizabeth Tyler and Judy Finn Plymyer, and Karl T. Tucker knew or should have known in the exercise of reasonable care of the abuses and neglect being suffered by the infant Plaintiff at the hands of Wendy Tucker yet none of said defendants took any action to remove the infant Plaintiff from the foster home.

43. It is, and at all times material, was well know in the foster care field that physical and emotional injuries regularly occur to children placed in foster are and these injuries result, *inter alia*, from abuse and neglect of children in foster family homes by their foster parents.

44. Defendants, Anne Arundel County, Maryland, D.S.S., and its Director, Esther Carpenter knew or should have known of the facts set forth in Paragraph 41.

45. Defendants, Anne Arundel County, Maryland, D.S.S., and its Director Esther Carpenter:

(a) Failed to develop or implement programs to insure that the various foster parents selected provided proper care and supervision for the foster children;

(b) Failed to develope or promulgate guidelines to use in selecting persons to become foster parents, and in supervising foster parents to eliminate those who were neglectful and abusive to children and;

(c) Failed to instruct their employees in properly supervising the foster parents, the foster homes, and children in the foster homes to insure that children under the care and supervision of foster parents receive proper care.

46. Defendants, Anne Arundel County, Maryland, D.S.S., and its Director, Esther Carpenter, knew or should have known that said failures to act would cause the constitutional rights of children in foster care to be violated, as were the constitutional rights of the infant Plaintiff herein as herein described.

47. Defendants, Esther Carpenter, Elizabeth Tyler, Judy Finn Plymyer and Karl T. Tucker knew or should have known that their failure to provide care and supervision of the infant Plaintiff (and in the case of Karl T. Tucker, his further failure to report the child abuse and neglect described herein which he knew or should have known) would cause the constitutional rights of the infant Plaintiff to be violated as herein described.

48. As a result of the aforementioned failures of Defendants, Anne Arundel County, Maryland, D.S.S., Esther Carpenter, Elizabeth Tyler, Judy Finn Plymyer, and Karl T. Tucker, the infant Plaintiff was caused to suffer a period of approximately 23 months during which he received two broken legs, severly burned hands, and wrists, head injuries, teeth injuries, and lacerations and bruises and mental and emotional injury as described herein all in violation of his constitutional rights.

49. At all times Windy L. Tucker and said Defendant, Karl T. Tucker, as foster parents acted as agents of the Defendants, Anne Arundel County, Maryland and D.S.S..

50. By reason of their aforementioned acts and/or omissions Defendants, Anne Arundel County, Maryland, D.S.S., Esther Carpenter, Elizabeth Tyler, Judy Finn Plymyer, Karl T. Tucker and Wendy L. Tucker, acting under color of state statute, regulations, ordinance, custom, or usage and in gross and wanton disregard of the infant Plaintiff's rights, deprived the infant Plaintiff of his right to proper supervision in a foster home and his right to live free of physical abuse in violations of the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution and his right to receive proper care and supervision in violation of 42 U.S.C. §608 (f).

51. By reason of the aforegoing, the infant Plaintiff suffered extreme terror, pain and suffering, physical injuries requiring hospitalization, permanent injuries to his hands and legs, disfiguring scars to his hands and legs, and mental and emotional anguish.

COUNT II

52. Paragraphs "1" through "51" are hereby realleged and incorporated by reference herein.

53. That the infant Plaintiff was intended to be a third-party beneficiary of the contract (Exhibit No. 1) between Defendant D.S.S. and Karl T. Tucker and Wendy L. Tucker dated April 29, 1971 and styled "Foster Parents' Agreement".

54. The Defendants Anne Arundel County, Maryland and its agent, Defendant D.S.S., breached the said contract by failing in their duty of supervision of the infant Plaintiff as herein described and as a direct consequence of said breach of contract the infant Plaintiff was caused to suffer the injuries, pain and suffering and mental anguish described herein.

COUNT III

55. Paragraphs "1" through "29" are hereby realleged and incorporated by reference herein.

56. With respect to the incident of January 20, 1972, as described in paragraph 27a., Defendant, North Arundel Hospital, Inc. in which the infant Plaintiff was treated for his injuries for the incident of January 20, 1972, and its agents, servants and employees, including defendants Sergio Alvarez, M.D., who treated the infant Plaintiff for his injuries in said hospital and nurse, Hazel Gent, who observed and attended the infant Plaintiff for his injuries had reason to believe that the infant Plaintiff was being abused as the hospital records indicate that the infant Plaintiff was admitted "with numerous bruises" and it was further noted in its records concerning that admission of the infant Plaintiff that: "Child displays fear of foster mother".

57. That despite the above knowledge, the Defendant, North Arundel Hospital, and its agents, servants and employees including Defendants, Sergio Alvarez, M.D. and Hazel Gent negligently failed to report the case of abuse to the agencies required by law to receive such reports as Defendants had a duty to so report and negligently failed to report same in the manner required by law.

58. As a proximate result of the failure of the North Arundel Hospital and its agents, servants and employees, including Defendants Sergio Alvarez, M.D. and Hazel Gent to report the child abuse of the infant Plaintiff to the proper agencies as required by law, and in the manner required, the infant Plaintiff was caused thereby to remain in the foster care of the Defendants Karl T. Tucker and Wendy L. Tucker where he received the injuries as outlined in paragraph 27 b. c. and d.

COUNT IV

59. Paragraphs "1 through 29" are hereby realleged and incorporated by reference herein.

60. With respect to the incident of January 12, 1973, as described in paragraph 27c, above, Defendant, Baltimore City Hospital, in which the infant Plaintiff was treated for his said injuries, and its agents servants and employees namely, Eduardo Mazzi, M.D., Ophilia Janes, M.D. and Maryland Hartge, social worker, had reason to believe that the infant Plaintiff was being abused as the Defendant, Baltimore City Hospitals, and its agents, servants and employees Eduardo Mazzi, M.D., Ophilia Janes, M.D. and Maryland Hartge knew of the previous injuries suffered by the infant Plaintiff i.e. leg fracture, burns and missing teeth at the time said Defendants treated the infant Plaintiff for the aforesaid described burn injury.

61. That despite the above knowledge, the Defendants Baltimore City Hospitals, and its agents, servants and employees, Eduardo Mazzi, M.D., Ophilia Janes M.D. and Maryland Hartge negligently failed to report the case of abuse to the agencies required by law to receive such reports as Defendants had a duty to so report.

62. As a proxmiate result of the failure of the Defendant, Baltimore City Hospitals, and its said agents, servants and employees, to report the child abuse of the infant Plaintiff to the agencies to whom such reporting is required by law, the infant Plaintiff was caused thereby to remain in the foster care of the Defendants Karl T. Tucker and Wendy L. Tucker where he received the injuries as outlined in paragraph 27d.

COUNT V

63. Paragraphs "1 through 29" and "56 through 58" are hereby realleged and incorporated by reference herein.

64. That the failure of Defendant, North Arundel Hospital, its agents, servants and employees to adopt proper procedures for the reporting of child abuse cases and the failure to report the case of the abuse of the infant Plaintiff and/or to report same in the manner required by law to

the agencies to whom by law such reporting is required, displayed a deliberate indifference and gross negligence as to the constitutional rights of the infant Plaintiff to live free of injury to his person.

65. That as a proximate result of such failure and deliberate indifference and gross negligence the infant Plaintiff was caused to suffer the injuries as outlined in paragraph 27 b., c., and d. and the attendant mental anguish of being returned to the foster home of Defendants, Karl T. Tucker and Wendy L. Tucker.

COUNT VI

66. Paragraphs "1" through "29" and "59" through "62" are hereby realleged and incorporated by reference herein.

67. That the failure of the Balitmore City Hospitals, its agents, servants and employees to adopt proper procedures for the reporting of child abuse cases and the failure to report the child abuse of the infant Plaintiff to the agencies to whom by law such reporting is required, displayed a deliberate indifference and gross negligence as to the constitutional rights of the infant Plaintiff to live free of injury to his person.

68. That as a proximate result of such failure and the deliberate indifference and gross negligence of the said Defendant, Baltimore City Hospitals, the infant Plaintiff was caused to suffer the injuries as outlined in paragraph 27d. and the attendant mental anguish of being returned to the foster home of the Defendants Karl T. Tucker and Wendy L. Tucker.

WHEREFORE, the infant Plaintiff respectfully requests that judgment be entered:

1. For 10 million dollars damages and 1 million dollars punitive damages on the first count.

2. For 10 million dollars damages and 1 million dollars punitive damages on the second count.

3. For 10 million dollars damages and 1 million dollars punitive damages on the third count.

4. For 10 million dollars damages and 1 million dollars punitive damages on the fourth count.

5. For 10 million dollars damages and 1 million dollars punitive damages on the fifth count.

6. For 10 million dollars damages and 1 million dollars punitive damages on the sixth count.

7. For interest from February 1, 1972.

8. For the cost and disbursements of this action.

9. For reasonable attorney's fees pursuant to 42 U.S.C. §1988.

10. For such other and further relief as this Court may deem just and proper.

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